

SETTLEMENT AGREEMENT

This Settlement Agreement, which includes all exhibits hereto, ("Agreement") is entered into this 5th day of October, 2006 by and between the parties to this Agreement ("Parties") JOHNNY AND JANE CARLTON (hereinafter collectively referred to as the "Carltons") and the CITY OF ALBUQUERQUE, through its Risk Management Division and Chief Administrative Officer, who are acting on behalf of the City and the remainder of the Defendants in the case styled *Johnny Carlton and Jane Carlton v. the City of Albuquerque, a municipal corporation, the City Council, its governing body, the Landmarks and Urban Conservation Commission, a commission of the City of Albuquerque, and its current Commissioners Edith Cherry, Barbara Maddox, Virginia Kupferman, Al Stotts, William Dodge, and Charles Price III, in their official capacities as Commissioners of the Landmarks and Urban Conservation Commission, Kristina Sly-Linton, in her individual and official capacity as Commissioner of the Landmarks and Urban Conservation Commission, and Mary Piscitelli, in her individual and official capacity as city planner for the City of Albuquerque* (which defendants are hereinafter collectively referred to as the "City Defendants") in the Second Judicial District Court, No. CV-2002-08374 ("the Action").

WHEREAS, in the Action, the Carltons brought claims against the City Defendants, among other things, for what the Carltons claimed was the unlawful inclusion into the Fourth Ward Historic Overlay Zone ("Historic Zone") of the Carltons' property (and for what the Carltons claimed was the unlawful application of the Fourth Ward Historic Overlay Zone guidelines to the Carltons' property), known as 918 Tijeras NW and also known as 200 Tenth NW, now more particularly described as:

Lot 12-A, Block 54, New Mexico Town Company's Original Townsite, being a replat of Lots 10, 11 & 12 and vacated right-of-way, Block 54 Original Townsite within Town of Albuquerque Grant, Projected Section 7, T.10N., R.3E., N.M.P.M., Albuquerque, Bernalillo County, New Mexico October 2004, and recorded in Bk-2004C Pg-353, Document # 2004156088, of the real property records of the Bernalillo County Clerk, Bernalillo County, New Mexico (hereinafter referred to as the "Property");

WHEREAS, in a separate proceeding, the Carltons appealed a decision by the City Council of the City of Albuquerque styled *Johnny Carlton and Jane Carlton v. Arsenio Sanchez and Laura Sanchez*, Second Judicial District Court, CV-2006-03275, which proceeding is hereinafter referred to as the "Variance Appeal";

WHEREAS, the City Defendants deny liability and assert that the settlement evidenced by this Agreement is a compromise to avoid further expenses of litigation;

WHEREAS, the Parties wish to settle the Action and the Variance Appeal subject to the following terms and conditions, and

IT IS HEREBY AGREED by and between the Parties as follows:

Section 1. City Council Approval. This Agreement and the duties and obligations of the Parties have been agreed to by the City Risk Management Director, as evidenced by his signature below. The Parties' obligations hereunder are, however, conditioned upon approval by the City of Albuquerque City Council of the City's obligation and agreement under Section 2(a) below. In the event that the City Council does not approve the City's obligation and agreement under Section 2(a) of this Agreement on or before December 4, 2006, this Agreement shall be of no force and effect and no Party shall have any obligation to any other Party hereunder. The execution of this

Agreement by the City's Chief Administrative Officer will have the effect of satisfying the condition of City Council approval and this Agreement will be binding on all Parties, subject to the conditions set forth in paragraphs 3(b) and 6.

The City will present this Settlement Agreement to the City Council for its approval of the City's obligation and agreement under paragraph 2(a) at the first available public meeting of the City Council after execution of this Agreement by all Parties (with the exception of execution of this Agreement by the City's Chief Administrative Officer). The Carltons understand that the deadline for getting an item from the administration on the agenda is 10:00 a.m. of the Tuesday preceding the scheduled Council meeting. Regular Council meetings are on the 1st and 3rd Monday of each month. As currently scheduled they are: 10/16, 11/6, 11/20, and 12/4.

Section 2. Obligations of the City.

(a) The City will not appeal the Carlton's Summary Judgment. The City acknowledges and agrees that, pursuant to the Carlton's Summary Judgment, the Carltons' Property is no longer in the Fourth Ward Historic Overlay Zone or subject to the Fourth Ward Historic Overlay Zone Design Guidelines.

(b) The City shall no later than 14 days after the date that the City Council approves the City's obligation under Section 2(a), deliver to the Carltons' attorneys a check in the amount of \$112,000.000, payable to the Landry & Ludewig Attorney Trust Account.

Section 3. Obligations of the Carltons.

(a) The Carltons will dismiss all of their claims and demands in the Action other than the Carlton's Summary Judgment, with prejudice, against all City Defendants. The Parties agree to the form of Order of Dismissal attached hereto as Exhibit A.

(b) The Carltons will dismiss the Variance Appeal, with prejudice upon the following condition: agreement by Arsenio and Laura Sanchez as required in Section 4 herein. The Parties agree to the form of Order of Dismissal attached hereto as Exhibit B.

Section 4. Matters Relating to the Variance Appeal. The City acknowledges the subject matter of the Variance Appeal is the Carltons' application for a variance from the SU-2/HDA height limitation as to two stairwell enclosures and one elevator enclosure on the Carltons' proposed development of the Carltons' Property as a high density apartment building (the "Proposed Development"). As well, the City Defendants hereby agree that the City Council's decision on the two variances requested by the Carltons, that is, the variances sought for the two stairwell enclosures and the elevator enclosure, was only a denial of variances for the two stairwell enclosures and the elevator enclosure and such decision did not address any other portion of the high density apartment building proposed by the Carltons for the Property. This Agreement is contingent upon an agreement by Arsenio and Laura Sanchez within a reasonable time from the date of execution of this Agreement that the City Council's decision on the two variances requested by the Carltons, that is, the variances sought for the two stairwell enclosures and elevator enclosure was only a denial of those two variances and that such decision did not address any other portion of the high density building proposed by the Carltons for the Property. The Carltons will seek such an agreement from the Sanchezes upon the execution of this Agreement.

Section 5. **Vested Rights.** Nothing contained in this Agreement shall be deemed to bind the City to the approval of the Proposed Development or any aspect of the Proposed Development. Nothing contained in this Agreement shall be deemed an agreement by the City that the Carltons have a vested right to any portion of the Proposed Development, including the height thereof. The Carltons acknowledge that the City, by executing this Agreement, does not assure the approval of the issuance of a building permit or any other required approval. The issuance of a building permit and any other approvals required as a condition of commencing the Proposed Development will be given by departments having jurisdiction over the Property pursuant to the requirements of municipal law in force at the time the permit or other approval is applied for. Notwithstanding the forgoing the Final Order that the Property is not in the Historic Zone is binding on the City and its departments.

Section 6. **Approval Contingencies.** This Agreement is contingent upon approval by the Court of Exhibits A and B and upon the Sanchezes' agreement as required in Sections 3(b) and 4 of this Agreement and upon the Sanchezes' approval of Exhibit B.

Section 7. **Mutual Releases.** This Agreement and the undertakings of the Parties constitutes a compromise and settlement of all claims and demands that Carltons have against the City arising out of the acts, omissions and occurrences described in the First Amended Complaint and Supplemental Complaint filed by the Carltons in the Action. The City and all other City Defendants deny all of the Carltons' claims and nothing contained herein shall be construed as an admission by the City or other City Defendant as to any of the Carltons' claims, which are disputed. In settlement of such claims, the Parties mutually release one another as follows:

(a) **By the Carltons.** The Carltons for and in consideration of the agreements contained herein, do hereby forever release, acquit, exonerate and discharge the City Defendants, and each of them, their employees, officers, elected officials, appointed members, agents and attorneys, of and from all manner of claims, damages and actions which the Carltons have, ever had or may hereafter have on account of or by reason of (a) any and every matter involving or arising out of the subject matter of the Action, including the allegations made in the First Amended Complaint and Supplemental Complaint; (b) any and every matter involving the application for Certificate of Appropriateness for the Carltons' Property; (c) any allegations that could have been made in the Action relating to the zoning of the Carltons' Property prior to the date hereof, including the inclusion of the Carltons' Property in the Fourth Ward Historic Overlay Zone; (d) the application of the Fourth Ward Historic Design Guidelines to the Carltons' Property; and (e) the denial of the Carltons' variance application. This release includes and comprises the Carltons' covenant not to sue or to file with any state or federal court any claims, counterclaims, third party claims or cross claims or suits of any nature against the City Defendants for damages or any equitable or other relief arising out of the foregoing. This release does not affect the enforceability of this Agreement or the orders entered under this Agreement, nor does it affect any claim involving the Carltons' Property based upon acts or omissions of the City Defendants first occurring after the date hereof.

(b) **By the City Defendants.** For and in consideration of the covenants and agreements contained herein, the City Defendants do hereby forever release, acquit, exonerate and discharge the Carltons and their agents, officers, directors, persons and entities, of and from all manner of counterclaims or demands which City Defendants had or could have raised in any lawsuit commenced by the Carltons arising out of the subject matter of this Agreement as of the date hereof. This release includes and comprises the City Defendants' covenant not to sue or to file with any state or federal court any claims, counterclaims, third party claims or cross claims or suits

of any nature against the Carltons for damages or any equitable or other relief arising out of the foregoing.

It is the intent of the Parties entering into this Settlement Agreement to fully and effectively dismiss and release any and all claims that either party may have, or all other persons or entities claiming by, through, or under either party, for any and all damage, loss or injury arising out of or resulting from the acts, omissions and transactions described in this paragraph. The Parties hereby agree that this Settlement Agreement shall operate as an absolute legal bar to any and every lawsuit, or claim of every nature which either party could, or might sustain as against each other, their attorneys or employees by reason of acts, omissions and transactions described in this paragraph. This Agreement is intended to have the broadest possible effect so that the disputes between the Parties will be finally and forever put to rest. It is understood and agreed that the purpose of this Settlement Agreement, insofar as to the claims of either party, is for a resolution of all issues which are or may be in controversy between the Parties, and for damages resulting from tort, or any other claim of any nature, arising from the acts, omissions and transactions described in this paragraph, and is to fully protect and release all Parties, their agents, attorneys, employees, directly or indirectly, for damages resulting from any aforementioned claims or conduct.

The Parties understand and agree that the City's payment to the Carltons' and its agreement not to appeal the Carltons' Summary Judgment are in full accord and satisfaction of disputed and unliquidated claims. Nothing contained herein is intended to be an admission of any liability or of any allegation made by either party in their pleadings in the Action or Variance Appeal.

The terms of this Settlement Agreement are contractual and not mere recitals and no representations have been made which are not contained herein. If any party institutes an action or other proceeding to enforce any right arising under this Settlement Agreement, the prevailing party shall be entitled to recover all reasonable costs and attorneys fees.

In the event of the failure of the express contingencies set forth in Section 6, the mutual releases contained in this Section 7 shall have no force or effect whatsoever.

Section 8. The Parties acknowledge that the negotiation, review and execution of this Agreement hereto have been entirely voluntary.

Section 9. This Agreement shall not be altered, modified, changed or amended except by written agreement executed by the Parties hereto.

Section 10. This Agreement shall be governed by the laws of the State of New Mexico.

Section 11. The below signatories for the City Defendants represent and warrant that they have the authority to execute this Agreement on behalf of all of the City Defendants (as listed in the first paragraph of this agreement) and to bind the City Defendants thereto and have followed all appropriate procedures in obtaining approvals for this Agreement.

Section 12. The Parties hereto shall execute and deliver any additional documents and do any and all things reasonably necessary to carry out the intent of the Parties pursuant to this Settlement Agreement.

Section 13. The signatures to this Agreement may be executed in counterparts and a telefaxed

copy of the signature shall be as effective as the original.

Section 14. The invalidation or unenforceability of this Agreement, or any part thereof, or Exhibits A or B, or any part thereof, by a court of competent jurisdiction, shall give the Carltons the right to resurrect all of the Carltons' claims against the City Defendants. In such case, all of the City's obligations hereunder will be deemed void and of no force or effect and the Carltons shall return the payment made by the City pursuant to Section 2(b). In the event that the Carltons elect to resurrect their claims, the Parties agree that Exhibits A and B will be set aside by the court and neither the Carltons nor the City Defendants will oppose any motion to set aside such orders. A breach of this Agreement by the City shall not be deemed to constitute the invalidation or unenforceability of this Agreement.

Section 15. This Agreement contains the entire agreement and understanding of the Parties with respect to the subject matter hereof and it supersedes all prior understandings, oral or written, and is the exclusive agreement of the terms agreed to by the Parties.

Section 16. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective heirs, successors, executors, administrators and assigns and runs with the Property.

IN WITNESS WHEREOF this Agreement has been executed by the Parties on and as of the date first written above.

Separate Signature Pages Attached

**Settlement Agreement—Carlton v. City of Albuquerque
Carltons' Signature Page**

By: _____
Johnny Carlton

By: _____
Jane Carlton

ACKNOWLEDGMENTS

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

EXECUTED AND ACKNOWLEDGED before me on this _____ day of _____, 2006 by Johnny Carlton and Jane Carlton, husband and wife.

Notary Public

My commission expires: _____

**Settlement Agreement—Carlton v. City of Albuquerque
City's Signature Page**

CITY OF ALBUQUERQUE
A municipal corporation

By: _____
Name: Charles Kolberg
Title: _____

CITY OF ALBUQUERQUE
A municipal corporation

By: _____
Name: Bruce J. Perlman, Ph.D.
Title: Chief Administrative Officer

ACKNOWLEDGMENTS

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

EXECUTED AND ACKNOWLEDGED before me on this _____ day of _____, 2006 by Charles Kolberg, the _____ for the City of Albuquerque, who represents that this is executed with the appropriate authority from the City of Albuquerque and the Landmarks and Urban conservation Commission and its Commissioners.

Notary Public

My commission expires: _____

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

EXECUTED AND ACKNOWLEDGED before me on this _____ day of _____, 2006 by Bruce J. Perlman, Ph.D., the Chief Administrative Officer for the City of Albuquerque, who represents that this is executed with the appropriate authority from the City of Albuquerque and the Landmarks and Urban conservation Commission and its Commissioners.

Notary Public

My commission expires: _____

**Settlement Agreement—Carlton v. City of Albuquerque
Piscitelli's Signature Page**

By: _____
Mary Piscitelli (Umphres)

ACKNOWLEDGMENTS

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

EXECUTED AND ACKNOWLEDGED before me on this _____ day of _____, 2006 by Mary Piscitelli (Umphres).

Notary Public

My commission expires: _____

**Settlement Agreement—Carlton v. City of Albuquerque
Sly-Linton's Signature Page**

Kristina Sly-Linton

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

EXECUTED AND ACKNOWLEDGED before me on this _____ day of
_____, 2006 by Kristina Sly-Linton.

Notary Public

My commission expires: _____

EXHIBIT A

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

NO. CV 2002-08374

JOHNNY CARLTON AND JANE CARLTON,
husband and wife,

Plaintiffs,

v.

THE CITY OF ALBUQUERQUE, NEW MEXICO, a
municipal corporation, THE CITY COUNCIL, its
governing body, THE LANDMARKS AND URBAN
CONSERVATION COMMISSION, a commission of the
City of Albuquerque, and its current Commissioners
EDITH CHERRY, BARBARA MADDOX, VIRGINIA KUPFERMAN,
AL STOTTS, WILLIAM DODGE AND CHARLES PRICE III, in their official capacities; KRISTINA
SLY-LENTON, in her individual and official capacity
as Commissioner of the Landmarks and Urban Conservation
Commission, MARY PISCITELLI, in her individual and official capacity
as city planner for the City of Albuquerque,

Defendants.

ORDER OF DISMISSAL OF REMAINING CLAIMS

This matter having come before the court by this stipulation of the parties, and the court
having considered the record and being fully advised in the premises orders as follows.

IT IS ORDERED, ADJUDGED AND DECREED that this court's Order on Plaintiffs'
Amended Motion for Partial Summary Judgment No. 1 entered November 4, 2005, is continued as
the final order of this Court.

IT IS FURTHER ORDERED that all of Plaintiffs' remaining claims and causes of action, as
set forth in Plaintiffs' First Amended Complaint for Declaratory Judgment, Injunctive Relief, and
Damages for Civil Rights Violations and Supplemental Complaint be and hereby are dismissed, with
prejudice.

Approved:

LANDRY & LUDEWIG, L.L.P.

By: _____

Stephanie Landry
Margaret C. Ludewig
1007 Marquette NW
Albuquerque, NM 87102
(505) 243-6100
Attorney for the Plaintiffs

Campbell & Wells, P.A.

By: _____

John S. Campbell
2155 Louisiana Blvd. NE #10300
Albuquerque, New Mexico 87110-5414

and

City of Albuquerque Legal Department
John E. Dubois
One Civic Plaza, 4th Floor, Room 4015
Albuquerque, New Mexico 87102

Attorneys for the Defendants

EXHIBIT B

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

NO. CV 2006-03275

JOHNNY CARLTON AND JANE CARLTON,
husband and wife,

Appellant,

v.

ARSENIO SANCHEZ AND LAURA SANCHEZ,
Husband and wife,

Appellees.

ORDER OF DISMISSAL

This matter having come before the court on this stipulation of the parties, and the court having considered the record and being fully advised in the premises orders as follows.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that that Appellants' appeal be and hereby is dismissed, with prejudice.

Hon. Ted Baca, District Court Judge

Approved:

LANDRY & LUDEWIG, L.L.P.

By: _____

Stephanie Landry
Margaret C. Ludewig
1007 Marquette NW
Albuquerque, NM 87102
(505) 243-6100
Attorney for the Appellants

Law Offices of David M. Houliston.

By: _____

David M. Houliston
400 Gold Ave SW # 500
Albuquerque, New Mexico 87125-0306
Attorney for the Appellees

Campbell & Wells, P.A.

By: _____

John S. Campbell
2155 Louisiana Blvd. NE #10300
Albuquerque, New Mexico 87110-5414

and

City of Albuquerque Legal Department
John E. Dubois
One Civic Plaza, 4th Floor, Room 4015
Albuquerque, New Mexico 87102

Attorneys for the City of Albuquerque